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IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 118

BANTAM BOOKS, INC.; DELL PUBLISHING COMPANY, INC.,
POCKET BOOKS, INC., and THE NEW AMERICAN LIBRARY OF
WORLD LITERATURE, INC.

Appellants,

JOSEPH A. SULLIVAN, ABRAHAM CHILL, EDWARD M. FLAN-
NERY, HOWARD C. OLSEN, DAVID COUGHLIN, JOSEPH LEON-
ELLI, OMER A. SUTHERLAND, DR. CHARLES GOODMAN and
EUSTACE T. PLIAKAS, in their capacities as Members of the
RHODE ISLAND COMMISSION TO ENCOURAGE MORALITY IN
YOUTH and ALBERT MCALOON in his capacity as Executive
Secretary of the RHODE ISLAND COMMISSION TO ENCOURAGE
MORALITY IN YOUTH,

Appellees.

APPEAL FROM THE SUPERIOR COURT OF RHODE ISLAND

APPELLEES' BRIEF

Opinions Below

The opinion of the Supreme Court of Rhode Island is re-
ported in 176 Atlantic Reporter, Second Series 393. It is
also contained in the transcript of record beginning at page
130

Jurisdiction

Title 28, United States Code, Section 1257 (2) confers jurisdiction upon this Court in appropriate cases. The appellants assert that in this case jurisdiction is conferred by 28 United States Code 1257 (2). The decision of the Supreme Court of Rhode Island is in favor of the validity of the statute appellants draw in question.

Statutes Involved

Article XII of the Constitution of Rhode Island provides as follows:

"SECTION 1. The diffusion of knowledge, as well as of virtue, among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education.

* * * * *

The General Assembly of Rhode Island created the Rhode Island Commission to encourage Morality in Youth at the January session, 1956 by Resolution No. 73 (page 8 of the transcript of record). The Resolution was amended May 25, 1959 Rhode Island Act and Resolves, January session, 1959 page 880:

"It shall be the duty of said commission to educate the public concerning any book, picture, pamphlet, ballad printed paper or other thing containing obscene, indecent or impure language, as defined in Chapter 11-31 of the general laws, entitled 'obscene and objectionable publications and shows' and to investigate and recommend the prosecution of all violations of said sections, and it shall be the further duty of said commission to combat juvenile delinquency and encourage morality in youth by (a) investigating situations which may cause, be responsible for or give rise to

undesirable behavior of juveniles, (b) educate the public as to these causes; and (c) recommend legislation, prosecution and/or treatment which would ameliorate or eliminate said causes."

Questions Presented

1. Does the General Assembly of Rhode Island have the authority and right to create an educational agency or commission to educate the public concerning obscene publications and the causes of juvenile delinquency?

2. Is the Resolution creating the Rhode Island Commission to Encourage Morality in Youth a valid exercise of the authority and right of the Rhode Island General Assembly to create such an educational agency?

3. Did the Rhode Island Commission to Encourage Morality in Youth validly exercise the authority and power vested in it?

The Facts

The facts contained in the transcript of record and as stated in appellants brief are substantially correct. The inference, however, to be drawn from the facts recited could be augmented slightly to favor the appellees without doing violence to candor or truth.

It is submitted that the only evidence in the record of this cause shows the books involved are "objectionable for sale, distribution or display for youth under 18 years of age." That is the declaration or statement in each of the exhibits introduced by the petitioners-appellants in the Superior Court. A very reasonable inference to be drawn from the "Silverstein" withdrawal of the books "rather than face the possibility of some sort of a court action against ourselves as well as the people that we supply" is that "Silverstein" realized the books were objectionable and could be subject to "some sort of a court action."

ARGUMENT

DOES THE GENERAL ASSEMBLY OF RHODE ISLAND HAVE THE AUTHORITY AND RIGHT TO CREATE AN EDUCATIONAL AGENCY OR COMMISSION TO EDUCATE THE PUBLIC CONCERNING OBSCENE PUBLICATIONS AND THE CAUSES OF JUVENILE DELINQUENCY?

The people of Rhode Island in the State Constitution charged and empowered the General Assembly "to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education." *Rhode Island Constitution*, Article XII, Section 1.

Education worthy of the name must restrict vice and the dissemination of the obscene. The compilation of lists of required texts and readings by any educational agency and the exclusion of other texts and books—or the listing of objectionable books—would restrict the dissemination of the petitioners books.

There has never been objection to such restriction, until the appellants sweeping assertion:

"It follows, therefore, that no state possesses the power to suppress or limit the circulation of any book until there has first been a determination by a court of competent jurisdiction, in accordance with the requirement of due process, that such book is obscene within the definition laid down in *Roth v. United States*, *supra*."

(Appellants brief, page 15)

"It follows further that any censorship method devised by a state which results in the suppression or limitation of the circulation of any book prior to such a judicial determination that such book is obscene, violates the constitutional rights of the publisher, the bookseller and the public in general."

(Appellants brief, page 15)

The appellants claim too much. In the current state of the record, the appellants contention amounts to unrestricted license to disseminate obscene as well as non-obscene books.

Obscene publications are not protected by the First Amendment.

Roth v. United States, 354 United States 476

As far as the record shows, to say that the appellants books are not obscene is gratuitous assertion.

In the case upon which appellants rely—*Bantam Books v. Melko*, 25 New Jersey Super. 292, Mod. 14 New Jersey 524, it may be noted the New Jersey Supreme Court mentioned that the Superior Court found the book there in question not to be obscene.

II

IS THE RESOLUTION CREATING THE RHODE ISLAND COMMISSION TO ENCOURAGE MORALITY IN YOUTH A VALID EXERCISE OF THE AUTHORITY AND RIGHT OF THE RHODE ISLAND GENERAL ASSEMBLY TO CREATE SUCH AN EDUCATIONAL AGENCY?

Reading the Resolution should suffice to disclose justification of the action of the General Assembly.

The Rhode Island Supreme Court in *Bantam Books, Inc. v. Sullivan*, 176 A. 2d 393 at 395 said:

"We have no difficulty in declaring the resolution constitutional. On its face it does not authorize previous restraint of freedom of the press. It does not confer on the commission any official power to regulate or supervise the distribution of books or other publications. The functions conferred are solely educative and investigative in aid of the legislative policy, to prevent the dissemination of obscene and impure literature, especially as it affects the morality of youth. The commission cannot lawfully order anyone to com-

ply with its conclusions regarding the objectionable nature of a publication which it has officially investigated."

There may be other or better ways of saying the same thing but the Rhode Island Supreme Court clearly and correctly stated the basis for holding the resolution constitutional.

III

DID THE RHODE ISLAND COMMISSION TO ENCOURAGE MORALITY IN YOUTH VALIDLY EXERCISE THE AUTHORITY AND RIGHT VESTED IN IT?

The holding and the basis for the holding in the opinion of the Rhode Island Supreme Court in the *Bantam Books, Inc. v. Sullivan, supra*, amply support the legality of the Commission's actions. The Court said at page 398:

"It is the social interest in order and morality that the legislature by enacting resolution No. 73 is seeking to subserve. And the acts of the Commission thereunder were in our opinion a reasonable and lawful implementation of the resolution."

Conclusion

The appeal should be denied and dismissed and the decree appealed from affirmed.

Respectfully submitted,

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